

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA



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Application for Order Authorizing
California-American Water Company
(U-210-W) to Purchase Bellflower
Municipal Water System's Assets and for
Related Approvals.

Application 18-09-013

REPLY OF THE PUBLIC ADVOCATES OFFICE

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I. INTRODUCTION

Pursuant to Rule 14.3(d) of the California Public Utilities Commission’s (Commission) Rules of Practice and Procedure (Rules) and the *Administrative Law Judge’s Email Ruling Granting Request of the City of Bellflower to Extend Deadline for Comments and Reply Comments on the PD*, dated April 10, 2020, the Public Advocates Office at the California Public Utilities Commission (Public Advocates Office) hereby submits its Reply to the Comments of the City of Bellflower (Bellflower) and the California-American Water Company (Cal Am) regarding the Proposed Decision Denying Application (PD).

The Comments of Bellflower and Cal Am engage in relitigation and argument rather than focusing on factual, legal or technical errors pursuant to Rule 14.3(c). This Reply will not endeavor to be an exhaustive refutation of all contentions in those Comments. As discussed below, the Comments fail to justify modification of the PD, which should be adopted.

II. DISCUSSION

A. The PD Correctly Applied the Law in Denying the Application

Bellflower and Cal Am argue that the Public Water System Investment and Consolidation Act (the Act) was intended to incentivize water system owners to consolidate systems, while overlooking the goal of providing ratepayer benefits.¹ Bellflower even says that “[t]he Act mandates that the FMV of the Municipal System be \$17 million, and that this amount not be subject to reasonableness review by the Commission.”²

Contrary to these assertions, the Legislature has stated that one of the intentions of the Act was benefitting ratepayers, declaring that “[p]roviding water corporations with an incentive to achieve these scale economies will provide benefits to ratepayers.”³ The Act does not divest the Commission of its duty and authority to ensure just and reasonable rates.⁴ In contrast to Cal Am’s overly narrow interpretation of the applicability of Section 451,⁵ “[t]he California

¹ Bellflower Comments at 11; Cal Am Comments at 3.

² Bellflower Comments at 9.

³ Cal. Pub. Util. Code § 2719(d).

⁴ See, e.g., Cal. Const. art. 12, Pub. Util. Code §§ 451, 701.

⁵ Cal Am Comments at 4-5.

Constitution expressly prohibits agencies such as this Commission from foregoing such statutory mandates.”⁶

In support of its argument, Cal Am incorrectly opines that the PD “improperly applies §1263.320 in the §2720 context.”⁷ Under Public Utilities Code section 2720(a), the Commission is indeed directed to “use the standard” of fair market value when establishing rate base from transactions such as these.⁸ However, fair market value is then tied to “Section 1263.320 of the Code of Civil Procedure,”⁹ which includes both the definition in subparts (a) and (b). While both Bellflower and Cal Am cite to certain legislative history and analyses of the Act,¹⁰ neither explains away the legislative history in which the “willing buyer/willing seller” was struck out of the bill and replaced by a cross reference to the code section which provides the two definitions of fair market value.¹¹

The California Supreme Court has articulated the principle that the “PUC’s interpretation of the Public Utilit[ies] Code ‘should not be disturbed unless it fails to bear a reasonable relation to statutory purposes and language[.]’”¹² Here, unlike a “relevant, comparable market,”¹³ both Bellflower and Cal Am were incentivized to reach the highest purchase price possible in this transaction.¹⁴ While the PD does not specifically cite to section 451, it does conclude that “[t]he purchase price of \$17 million is unreasonable.”¹⁵ In making its determination of fair market value, the PD appropriately harmonized section 2720 with the underlying mandate of section 451. The PD lawfully protects ratepayers from the costly proposed deal.

⁶ D.18-07-025, at 26 (*citing* Cal. Const. art. 3, § 3.5.). D.18-07-025 denied rehearing of D.17-11-033 (pet. denied, Cal. Ct. of Appeal, Fourth Appellate Dist., 11/13/2018; pet. denied, Cal. Sup. Ct., 1/30/2019; cert. denied, U.S. Sup. Ct., 10/07/2019).

⁷ Cal Am Comments at 5.

⁸ Cal. Pub. Util. Code § 2120(a).

⁹ Cal. Pub. Util. Code § 2120(a)(2).

¹⁰ Cal Am Comments at 7-8; Bellflower Comments at 9.

¹¹ Cal PA-1 at 7 (*citing* Cal PA-1A, Attachment 1-4: Sept. 8, 1997 SB 1268 Amended Bill Text).

¹² *Southern California Edison Co. v. Peevey*, 31 Cal. 4th 781, 796 (2003)(*quoting* *Greyhound Lines, Inc. v. Public Utilities Comm.*, 68 Cal. 2d 406, 410–411 (1968).).

¹³ *See* Cal. Code Civ. Pro. § 1263.320(b).

¹⁴ The PD correctly states that: “Special purpose properties such as utilities tend to present unique factual situations affecting their value.” PD at 7.

¹⁵ PD at 14, COL #2.

B. The Comments Misstate the Condition of the Record in Asserting that the AKM Valuation May Not be Relied on

Cal Am argues that “the PD determines the FMV for Bellflower’s assets based primarily on a single piece of information: a 2014 AKM Valuation introduced into evidence by the Public Advocates Office[.]”¹⁶ The Comments misstate the condition of the record regarding the AKM Valuation.¹⁷

Prior to the Public Advocates Office’s submission of testimony, Mr. Wademan submitted direct testimony on behalf of Cal Am on September 14, 2018. Attachment 3 of the testimony includes a document showing a list of certain assets, apparently drawn from a “municipal water system valuation.”¹⁸ The testimony asserts that:

Installation dates were assigned to the components of the Bellflower Municipal Water System based on information provided to me in a document titled “Appendix A – Municipal Water System Valuation.” This document is included in ‘**Attachment 3**’. This document was provided to me from California-American Water. My understanding is that the document originated from the City of Bellflower.”¹⁹

Attachment 2 of the testimony is entitled “Opinion of Replacement Cost for the Bellflower Municipal Water System.”²⁰ In the Opinion, Mr. Wademan confirms that “Appendix A” was “reviewed as part of the replacement cost estimate.”²¹

The identification of specific assets in the AKM Valuation is remarkably similar to Attachment 3.²² One key difference is that Attachment 3 only included that following categories of data per asset: account type, location, asset description, year, length/quantity (ft/#), size (in.), 2014 age (years), and projected service life.²³ Appendix A of the AKM Valuation also included: 2014 unit cost, 2014 reproduction cost, accumulated depreciation, and 2014 estimated RCNLD.²⁴

¹⁶ Cal Am Comments at 1.

¹⁷ Bellflower Comments at 1-8; Cal Am Comments at 9-12.

¹⁸ Direct Testimony of Michael Wademan, Attachment 3.

¹⁹ Direct Testimony of Michael Wademan, 4:8-12 (emphasis in original).

²⁰ Direct Testimony of Michael Wademan, Attachment 2.

²¹ Direct Testimony of Michael Wademan, Attachment 2, at 2-3.

²² Cal PA Testimony, Attachment 3-13, Appendix A.

²³ Direct Testimony of Michael Wademan, Attachment 3.

²⁴ Cal PA Testimony, Attachment 3-13, Appendix A.

It is notable that the reference to “2014 age” in both documents ties them to the year 2014, when AKM conducted its valuation.

Public Advocates Office, as well as rebuttal witnesses for Bellflower and Cal Am, testified regarding the AKM Valuation. At hearings, Cal Am’s counsel argued: “Now, when I look at Mr. Wademan’s testimony in the reference, the exhibit that it’s referring to is a list of assets. And Mr. Wademan then explains that he took that list of assets, and he went and did his study based on them. He doesn’t indicate he used any of *the valuations that came from that*.”²⁵

The condition of the record indicates that Mr. Wademan reviewed data associated with the AKM Valuation; which opened the door to its review in this proceeding. Mr. Wademan may not have used “any of the valuations” that were available to Bellflower and/or Cal Am. However, the AKM Valuation puts Mr. Wademan’s opinion in context. This record allows the Commission to accord appropriate weight to his testimony.

The AKM Valuation was properly admitted, and properly relied on, in the PD.

C. The Comments’ Relitigation Misstates the Law

Bellflower and Cal Am raise numerous arguments that essentially amount to relitigation of this proceeding. For example, Bellflower and Cal Am argue about: the validity of AKM Valuation,²⁶ future upgrades,²⁷ the percentage of asbestos cement pipes,²⁸ the break rates of asbestos cement pipes,²⁹ intent of other bidders,³⁰ and price comparisons.³¹ Bellflower and Cal Am also speculate as to the impact of General Order 103.³²

The record contains ample support for the PD’s outcome. Public Advocates Office testified about: the degree of pending liabilities demonstrated by the AKM Valuation,³³ the failure of Cal-Am’s valuation to account for the portion of the system comprised of asbestos

²⁵ RT at 277:1-7 (emphasis added).

²⁶ Cal Am Comments at 10; Bellflower Comments at 2.

²⁷ Cal Am Comments at 9-10; Bellflower Comments at 3.

²⁸ Cal Am Comments at 13; Bellflower Comments at 13.

²⁹ Cal Am Comments at 13; Bellflower Comments at 14.

³⁰ Cal Am Comments at 13-14; Bellflower Comments at 14-15.

³¹ Cal Am Comments at 14; Bellflower Comments at 15.

³² Cal Am Comments at 10; Bellflower Comments at 7.

³³ Cal PA Testimony at 20.

cement pipes,³⁴ the rate at which Bellflower's asbestos cement pipes break,³⁵ the insufficiency of the earnings of Bellflower Municipal to support its valuation,³⁶ and, while not dispositive, the amount of sheer profit the purchase price would grant to Bellflower.³⁷ The Public Advocates Office's Opening Brief details how, given the totality of these circumstances, the most the Commission could have adopted as the fair market value of the Bellflower System was \$9 million.³⁸

In any event, Bellflower and Cal Am's arguments go to the weight of the evidence and do not establish factual, legal or technical errors pursuant to Rule 14.3(c).³⁹ Error could not be established on such grounds as the Commission has broad discretion in making its factual findings. "[T]he commission's findings based on conflicting evidence or on undisputed evidence from which conflicting inferences may reasonably be drawn are final and not subject to review."⁴⁰

D. Cal Am's Motion to Compel was Properly Denied

Cal Am asserts that it was unfairly denied discovery related to "possible misrepresentations of facts in the proceeding."⁴¹ The underlying discovery related to argument in attorney-filed pleadings rather than testimony.⁴² Public Advocates Office properly objected on privilege and Rule 10.1 grounds.⁴³ Denying such discovery on attorney thoughts and impressions did not require more than the one-sentence disposition in the PD.⁴⁴

III. CONCLUSION

Bellflower and Cal Am's arguments lack merit. The PD should be adopted.

³⁴ Cal PA Testimony at 14.

³⁵ Cal PA Testimony at 15.

³⁶ Cal PA Testimony at 22.

³⁷ Cal PA Testimony at 23.

³⁸ Cal PA Opening Brief at 17.

³⁹ Such relitigation should be accorded no weight. Rule 14.3(c).

⁴⁰ *City v. PUC*, 39 Cal. 3d 523, 530 (1985).

⁴¹ Cal Am Comments at 14.

⁴² Cal Am Motion to Compel at 1.

⁴³ Cal PA Response to Cal Am Motion to Compel at 2-7.

⁴⁴ PD at 14, OP #2.

Respectfully submitted,

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